

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

UNITED STATES OF AMERICA,

vs.

MATTHEW JOHNSON,

Defendant.

DOCKET NO. 5:23-CR-56-KDB

**UNOPPOSED MOTION TO
CONTINUE TRIAL DATE**

Matthew Johnson, by and through his counsel of record, Assistant Federal Defender John Parke Davis, respectfully requests that this Court continue the trial date presently scheduled for December 16, 2024, along with the associated pretrial motions deadline.

1. The government does not oppose this motion.

2. On November 17, 2023, Mr. Johnson was arraigned on a two-count Bill of Indictment, charging him with one count of wire fraud pursuant to 18 U.S.C. § 1343 (Count One); and one count of tax evasion pursuant to 26 U.S.C. § 7201 (Count Two). He was appointed counsel and ordered released on conditions of bond.

3. On July 19, 2024, the parties filed a Joint Motion for Peremptory Setting [Doc. 20] in which the parties requested this Court continue this matter to a date certain. The parties differed, however, on whether the case should be set on this Court's December, 2024 or February, 2025 trial terms.

4. Specifically, Mr. Johnson requested a peremptory setting in the February term of court, citing to, *inter alia*, lead counsel's paternity leave—which began on July 19, 2024 and ended on October 16, 2024—and defense counsel's retention of a mental health expert who could not

begin work until September, 2024. The government requested a setting on the December trial term, but acknowledged at the time that the above-noted mental health testing may warrant an additional continuance from the December term. This Court granted the Joint Motion for Peremptory setting and set a trial date in the December, 2024 term. [Doc. 21].

5. Mr. Johnson is still waiting on the full results from his mental health evaluation and collateral interviews are still in progress. Mr. Johnson currently anticipates a draft report in the first week of December, 2024. Additional time is needed to fully evaluate this report and its conclusions, determine its full impact on this case (including relevance to trial and/or to any ongoing negotiations), and, to the extent appropriate depending on those results, permit the government to inspect the report and seek any responsive opinions.

6. Thus, as the parties originally forecast may become necessary, the parties now agree that a continuance to the February, 2025 term of Court is appropriate and in the interests of justice.

7. The time period of this continuance is excludable under 18 U.S.C. § 3161(h)(1), because the Fourth Circuit has specifically found ongoing plea negotiations to be “other proceedings” under the terms of the Speedy Trial Act. *E.g. U.S. v. Keita*, 742 F.3d 184, 188 (4th Cir. 2014); *U.S. v. Leftenant*, 341 F.3d 338, 345 (4th Cir. 2003) (collecting similar authority from other circuits). Thus, this period of delay is excludable as a period of delay resulting from another proceeding concerning the defendant. 18 U.S.C. § 3161(h)(1); *Keita*, 742 F.3d at 188 (affirming that any period of delay due to ongoing plea negotiations is excludable under the Speedy Trial Act). It is also excludable under § 3161(h)(7)(B)(iv), as the need for additional time to allow for effective preparation, taking into account defense counsel’s due diligence, outweighs the interests of the public or the defendant in a speedy trial.

8. For the same reasons stated above, Mr. Johnson needs additional time to research related legal and factual issues that may arise from reviewing discovery, interviewing Mr. Johnson, and investigating the case.

WHEREFORE, Mr. Johnson respectfully requests a continuance of his trial date from the December 16, 2024 term of Court until the February, 2025 term of Court, and a corresponding extension of the pretrial motion and notice deadline to line up with the Court's next criminal term.

Respectfully submitted:

s/ John Parke Davis
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DATE: November 22, 2024